



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
GARVIS L. HANNAH, JR.,)	
)	
Complainant,)	
)	Charge No.: 2001CF1721
and)	EEOC No.: 21BA11041
)	ALS No.: 11739
CULINARY-TYSON FOODS,)	
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On February 1, 2001, Complainant, Garvis L. Hannah, Jr., filed a charge of discrimination with the Illinois Department of Human Rights (IDHR). That charge alleged that Respondent, Culinary-Tyson Foods, discriminated against Complainant on the basis of his race when it discharged him.

Respondent failed to attend the IDHR's scheduled fact finding conference. As a result, the IDHR found Respondent to be default and filed a Petition for Hearing to Determine Complainant's Damages. A panel of the Human Rights Commission entered an Order of Default against Respondent and ordered a hearing on damages. That hearing was held on May 6, 2002. Although written notice of the hearing was mailed to Respondent's last known address, Respondent did not attend the hearing. The matter is ready for decision.

FINDINGS OF FACT

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. Respondent discharged Complainant on or about September 17, 2000.

2. At the time of his discharge, Complainant was earning approximately \$26,000.00 per year.

3. After his discharge, Complainant earned approximately \$7,000.00 at a temporary job. He had no other employment after his discharge.

CONCLUSION OF LAW

1. Ambiguities in damage calculations are resolved against the discriminating employer.

DISCUSSION

On March 6, 2002, a panel of the Human Rights Commission entered an order of default against Respondent. As a result, there are no liability issues to discuss. Only damages issues remain to be determined.

A prevailing complainant is presumptively entitled to reinstatement to the job lost because of unlawful discrimination. Complainant should be reinstated to his previously held position, freezer forklift operator, or to a substantially equivalent position. His pay, benefits, and seniority should be the same as they would have been if he had not left Respondent's employ.

Complainant also is entitled to an award of backpay. Complainant testified that he earned \$24,000.00 to \$26,000.00 per year with Respondent. Under Commission case law, ambiguities involving backpay amounts should be resolved against the discriminating employer. **Clark v. Human Rights Commission**, 141 Ill. App. 3d 178, 490 N.E.2d 29 (1st Dist. 1986). Therefore, the \$26,000.00 figure will be used to calculate backpay.

Respondent discharged Complainant on or about September 17, 2000. From that date until September 17, 2001, Complainant would have earned \$26,000.00. For the 33 weeks from that date to the date of the damages hearing, he would have earned an additional \$16,500.00. Thus, from the date of his discharge through the date of the damages hearing, Complainant would have earned a total of \$42,500.00. He earned approximately \$7,000.00 at a temporary job after his discharge. Subtracting that amount from what he would have earned leaves \$35,500.00. That is the recommended backpay award through the date of the damages hearing.

Also, since Complainant was unemployed as of the time of the damages hearing, backpay liability continues to accrue. As a result, Respondent should pay Complainant \$500.00 per week from the date of the damages hearing until Respondent offers him reinstatement.

Because he has had to wait for the damages to which he is entitled, prejudgment interest is necessary to make Complainant

whole. Such interest is recommended.

In addition, Respondent should be ordered to clear Complainant's personnel records of references to this case. Finally, Respondent should be ordered to cease and desist from further unlawful discrimination on the basis of race.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent reinstate Complainant to his former position, or to a substantially equivalent position, at the rate of pay and with the seniority and benefits (including pension benefits) he would have had if he not left Respondent's employ;

B. That Respondent pay to Complainant the sum of \$35,500.00 for lost backpay through the date of the damages hearing;

C. That backpay continue to accrue at the rate of \$500.00 per week from the date of the damages hearing until Respondent offers Complainant reinstatement;

D. That Respondent pay to Complainant prejudgment interest on all amounts awarded, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

E. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

F. That Respondent be ordered to cease and desist from

further unlawful discrimination on the basis of race.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 16, 2002